

ANN MILLER RAVEL, County Counsel (S.B. #62139)
MELISSA R. KINIYALOCIS, Deputy County Counsel (S.B. #215814)
OFFICE OF THE COUNTY COUNSEL
70 West Hedding, East Wing, 9th Floor
San Jose, California 95110-1770
Telephone: (408) 299-5900
Facsimile: (408) 292-7240

Attorneys for Defendant
TOM COUNCIL

CHRISTOPHER J. KEANE (S.B. #194848)
530 Jackson Street, Second Floor
San Francisco, California 94133
Telephone: (415) 398-2777
Facsimile: (415) 520-2282

Attorney for Plaintiff
ELGRIE HURD, III

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELGRIE HURD, III,)	No. C 07-3852 JF
Plaintiff,)	
v.)	JOINT CASE MANAGEMENT
)	STATEMENT
TOM COUNCIL,)	Date: November 9, 2007
Defendant.)	Time: 10:30 a.m.
)	Crtrm: 3, 5 th Floor
)	Judge: Honorable Jeremy Fogel

The parties to the above-entitled action jointly submit this Case Management Statement pursuant to Civil Local Rule 16-9.

1. Jurisdiction and Service

This Court has jurisdiction over this 42 U.S.C. § 1983 action pursuant to 28 U.S.C. § 1331. All parties have been served.

2. Factual Summary

On November 11, 2005, Plaintiff Elgrie Hurd III was one of many individuals involved in demonstrations and protests at De Anza Community College in Cupertino during a visit by

1 former United States of America Secretary of State Colin Powell. Plaintiff was arrested that
 2 evening by Defendant Deputy Tom Council. Plaintiff contends that the seizure occurred while
 3 he was peaceably standing on a sidewalk/berm/curb on the side of the road. Plaintiff contends
 4 that there was no legal justification for the seizure and that he was profiled because of his race
 5 and/or national origin.

6 Defendant denies Plaintiff's allegations. Defendant contends that Plaintiff was blocking a
 7 roadway, refused to move out of the roadway and get up onto the sidewalk/berm/curb, and
 8 grabbed Defendant's arm. Defendant contends that he had legal justification for seizing and
 9 arresting Plaintiff, that the force used during the arrest was appropriate and lawful, and that
 10 Defendant did not profile Plaintiff due to his race and/or national origin.

11 **3. Legal Issues**

12 The disputed legal issues include, but may not be limited to: (1) whether Plaintiff's search
 13 and seizure violated his right not to be subjected to unreasonable search and/or seizure without
 14 probable cause; (2) whether Plaintiff's speech and/or expression and/or peaceable assembly was
 15 a substantial and/or motivating factor in Defendant's decision to seize and/or search Plaintiff;
 16 and (3) whether Defendant's decision to seize and/or search Plaintiff was done as a result of
 17 Plaintiff's race and/or national origin.

18 **4. Motions**

19 There are no pending motions, and the parties to do anticipate filing any motions.

20 **5. Amendment of Pleadings**

21 The parties do not anticipate any amendments to the pleadings.

22 **6. Evidence Preservation**

23 Defendants have preserved evidence, including incident reports, operations plans, video
 24 footage, and photographs.

25 **7. Disclosures**

26 The parties will serve their initial disclosures by November 16, 2007.

27 //

28 //

8. Discovery

Discovery has not yet begun. The parties do not anticipate any modifications to the discovery rules.

9. Class Action

This action is not a class action.

10. Related Cases

There are no related cases.

11. Relief

Plaintiff seeks compensatory damages in an amount in excess of the jurisdictional minimum of this Court, exemplary damages, punitive damages, attorneys' fees, and costs.

12. Settlement and ADR

Counsel have met and conferred regarding ADR and have agreed to participate in Early Neutral Evaluation.

13. Consent to Magistrate Judge

On October 4, 2007, Plaintiff requested that this matter be reassigned to a district judge.

14. Other References

This case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

Defendants request that liability issues be bifurcated from damages at trial.

16. Expedited Schedule

Due to the disputed factual and legal issues this is not a case that is suitable for handling on an expedited basis.

17. Scheduling

The parties propose the following:

Expert disclosure	August 8, 2008
Discovery cutoff	September 12, 2008
Dispositive motions	September 12, 2008

Pretrial conference November 7, 2008

Trial November 17, 2008

18. Trial

The parties have requested a jury trial.

19. Disclosure of Non-Party Interested Entities or Persons

Defendant is an employee of the County of Santa Clara and is not required to file a Certification of Interested Entities or Persons.

Dated: October 26, 2007

ANN MILLER RAVEL
County Counsel

By: /S/
MELISSA R. KINIYALOCKS
Deputy County Counsel

Attorneys for Defendant
TOM COUNCIL

Dated: October 26, 2007

By: /S/
CHRISTOPHER J. KEANE

Attorney for Plaintiff
ELGRIE HURD, III

98531.wpd